1 THOMPSON GARCIA ATTORNEYS AT LAW 2 5776 Stoneridge Mall Road Suite 390 3 Pleasanton, CA 94588 Telephone: (510) 782-7580/(925) 201-3130 Facsimile: 925-397-3042 4 Email: email@thompsongarcialaw.com 5 6 JESSE J. GARCIA (SB# 61223) AUSTIN M. THOMPSON (SB# 229924) 7 Attorneys for Defendant FRANČISCO MIRANDA 8 9 10 IN THE UNITED STATES DISTRICT COURT 11 NORTHERN DISTRICT OF CALIFORNIA 12 UNITED STATES OF AMERICA, CASE NO.: 3:2020-CR-00452 13 Plaintiff, DEFENDANT'S OPPOSITION TO UNITED 14 STATES MOTION TO REVOKE RELEASE VS. ORDER AND TO EXTEND STAY OF 15 RELEASE FRANCISCO MIRANDA, 16 Defendant. 17 18 Pretrial Services, after a careful assessment of defendant Francisco Miranda's criminal and personal history, as well as the nature of the charges in the present case, and the comments of 19 20 the case agent, recommended that Mr. Miranda be released on a \$50,000 unsecured bond and with various conditions, including "Defendant must not travel outside of the Northern District of 21 California". (See 12/24/20 Pretrial Services Report, ) On December 28th, 2020, after hearing the 22 23 evidence and argument from the Government, which included all of the same accusations made in their Motion to Revoke Release Order (Dkt. No. 31), the Honorable-Sallie Kim, U.S. 24 25 Magistrate Judge followed the recommendation of Pretrial Services and ordered defendant 26 released on unsecured \$50,000 bond. (Dkt. No. 32) 27 U.S.A. v. FRANCISCO MIRANDA, CASE NO.: 3:2020-CR-00452

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DEFENDANT'S OPPOSITION TO U.S.A., MOTION TO REVOKE RELEASE ORDER

Of course, under United States v. Koenig, 912 F.2d 1190, this court is to make it's own

independent judgement with regards to the magistrate's findings and make a "'de novo' determination of the facts.." <u>Id</u>. at 1193. The factors to be considered in determining whether there are conditions of release which will ensure the defendant's appearance and the safety of the community are spelled out in 18 U.S.C. §3142(g). They include: (1) the nature and circumstances of the offense; (2) the weight of the evidence against the person; (3) the history and characteristics of the person, including family and community ties, employment, length of residence, and prior criminal record, among others; and (4) the nature and seriousness of any danger to the community posed by a release. Under these criteria, given the facts set forth below, Mr. Miranda is a good candidate for pre-trial release.

Mr. Miranda is charged in the present case with Conspiracy to Distribute and Possess with Intent to Distribute Cocaine, pursuant to Title 21, US Code, Section 846. There is no indication from the discovery received thus far that Mr. Miranda used or threatened to use violence or possessed firearms in connection with this alleged offense or at any other time. According to the Pretrial Services Report completed on 12/24/2020, Mr. Miranda's prior history consists of a single non-violent, drug-related conviction and deportation in 2010. His substantial ties to the community include his four children, aged 12 years to 8 months, who are all U.S. citizens and have lived in the U.S. their whole lives.

Under these circumstances, the Government cannot meet their burden. A 34-year-old with a single criminal arrest, no history of violence, no failures to appear, and a potential bail package that can directly address any hypothetical risks cannot be considered "the carefully limited exception" requiring pretrial detention under the Bail Reform Act. United States v. Salerno, 481 U.S. 735, 755 (1987).

In upholding the Bail Reform Act, the Supreme Court explained that "in our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." <a href="Salerno">Salerno</a>, 481 U.S. at 755. The Court cautioned that the Bail Reform Act should not be used by

the lower courts as "a scattershot attempt to incapacitate those who are merely suspected of these serious crimes." <u>Id</u>. at 741. Accordingly, the Ninth Circuit has repeatedly emphasized that, "only in rare circumstances should release be denied," <u>United States v. Motamedi</u>, 767 F.2d 1403, 1405 (9th Cir. 1985); see also <u>United States v. Honeyman</u>, 470 F.2d 473,474 (9th Cir. 1972) ("The whole spirit of the Bail Reform Act, 18 U.S.C. § 3146, et seq., is that a defendant facing trial should be released, rather than detained, unless there are strong reasons for not releasing him.").

The Bail Reform Act requires this Court to first evaluate, based on certain statutorily specified criteria set forth at §3142(g), whether releasing Mr. Miranda on his own recognizance is sufficient to reasonably assure (1) his appearance as required and (2) the safety of any other person and the community. 18 U.S.C. § 3142(a). The burden of persuasion-to establish by clear and convincing evidence that the defendant poses a risk of flight or particularized future threat to a specific individual or community-remains at all times with the government. <u>United States v. Gebro</u>, 948 F.2d 1118, 1121 (9th Cir. 1991) and <u>United States v. Hir</u>, 517 F.3d 1081, 1086 (9th Cir. 2006). If the evidence cuts both ways and it is a close call, "[d]oubts regarding the propriety of release should be resolved in favor of the defendant." <u>Motamedi</u>, 767 F.2d at 1405.

The Ninth Circuit has emphasized that "the weight of the evidence when coupled with the presumption of innocence is, as a general rule, not particularly probative of the issues relevant at a detention hearing," and as such, it is "the least important of the various factors" in the bail review analysis. Motamedi, 767 F.2d at 1408; see also 18 U.S.C. 31420) ("nothing in this section shall be construed as modifying of limiting the presumption of innocence"). Significantly, Mr. Miranda's minimal criminal record; the fact that he has no history of violence or use or possession of firearms; the fact that he has no known failures to appear; and the fact that he has strong family support and a stable residence, coupled with his presumptively innocent status, all outweigh any allegation of potential risk of flight or danger to the community.

## 1. Francisco Miranda's Limited Criminal History

As set forth in the December 24<sup>th</sup>, 2020 Pretrial Services report, Miranda's "Prior Criminal Record" contains a single 2010 San Mateo County conviction on non-violent drug-related charges, not involving firearms. It is also noted that, following his incarceration on that conviction, Mr. Miranda was deported from the United States, in August, 2010. In September, 2011 a probation violation was alleged and a bench warrant issued, which is still active. He has not suffered any arrest or conviction in over ten years.

The probation violation and bench warrant presumably arose from his failure to report due to being deported, not any willful failure to appear. There is no indication in his records that he has ever purposefully absconded. He has had no interaction with law enforcement for the past 10 years. He has no history of violence whatsoever. Furthermore, Mr. Miranda's only prior criminal arrest was in state court. He has never been in the federal criminal justice system, and has never been subject to supervision or subject to the many release conditions that are available through Pretrial Services to mitigate any hypothetical risks.

## 2. Defendant's strong ties to the community

Mr. Miranda also has strong family support and roots in his community of residence (Santa Clara, CA-in the Northern District of California). Mr. Miranda, his wife and family, siblings and friends all reside locally. Though he is not native to California, he considers it home.

Upon his release from custody, Mr. Miranda will return home to live with his wife Maria Ledesma and their 3 sons -Ricardo, age 12, Francisco, age 3, and Santiago, 7 months. They have lived in their current house in Santa Clara for the past eight months and for years before that they resided nearby in East Palo Alto. Mr. Miranda has a close extended family network in California's South Bay Area consisting of his sister Elizabeth Sanchez who lives in South San Francisco, and brother Armando Miranda who lives in Santa Clara and their families.

The Government alleges that Mr. Miranda has been recorded stating that he will "leave to the motherland", if he is apprehended by law enforcement. (U.S. Motion to Revoke Release Order, Dkt. No. 31, at 3) This allegation is misleading and inaccurate. The recorded conversation was about attendance at a cockfight. (Dkt. No. 13-1 at 3) The conversation is filled with name-calling and joking. (Id.) The statement attributed to Mr. Miranda: "Si me chingan ... pos me voy pa mi tierra?" is literally translated "If they f- - k me, I will go to my land". The Government's interpretation of the statement is that if law enforcement catches him (again, in this context, it would be for attending a cock fight) he would *flee* to his homeland. (U.S. Motion to Revoke Release Order, Dkt. No. 31, at 3). However, even if they were talking about law enforcement apprehension, the statement, if made by Mr. Miranda, would more properly be interpreted to mean that he would be deported, given his previous experience in 2010. Thus, this statement does not reflect an intention to *flee* to Mexico.

Under these circumstances, the government's allegations in this case, serious as they may be, do not outweigh the many mitigating circumstances that strongly support Mr. Miranda's release on conditions. A 34-year-old with a single criminal arrest, ten years ago and no history of violence, especially one with Mr. Miranda's strong support network, cannot reasonably be characterized as the "carefully limited exception" requiring detention. <u>Salerno</u>, 481 U.S. at 755.

## 3. There are viable conditions of release that can mitigate any identified risks

Furthermore, the ultimate question is not whether there are risks associated with Mr. Miranda's release, but whether there are conditions that can be fashioned that would reasonably assure Mr. Miranda's appearance and the safety of the community. See Hir, 517 F.3d at 1091-92 (explaining that even where a defendant may pose a danger, the court still must release him if there are a combination of conditions that would reasonably assure the safety of the community); United States v. Scott, 450 F.3d 863, 874 (9th Cir. 2006) (cautioning that a district court can only impose conditions on release if they are necessary to address a defendant's demonstrated "heightened risk of misbehaving while on bail").

The government makes mention of the identification documents found in the investigation of Mr. Miranda which bore the name of someone else. (Dkt. No. 31 at 3-4) Those documents have been seized and are in the possession of law enforcement. In addition, Mr. Miranda will surrender any passports in his possession and abide by any condition set forth by this court such as not possessing documents in anyone else's name and not traveling outside of the Northern District of California. The Magistrate Judge already imposed the conditions that Mr. Miranda be subject to a curfew and GPS monitoring.

Under the aforementioned circumstances, the Government cannot meet its heavy burden of establishing that there are no conditions that will reasonably assure Mr. Miranda's reappearance in court. There are many additional conditions available even beyond those recommended by Pretrial Services that will further ensure that Mr. Miranda is abiding by the conditions of his release. Any concern by the government regarding recidivism can be adequately addressed by all of the aforementioned conditions.

II. SHOULD THE COURT FIND THAT THE GOVERNMENT HAS PRESENTED CLEAR AND CONVINCING EVIDENCE TO WARRANT MR. MIRANDA'S CONTINUED DETENTION, COMPELLING REASONS EXIST TO TEMPORARILY RELEASE MR. MIRANDA

Mr. Miranda's ties to the community and proposed surety, and the mechanisms available through pretrial services to prevent illegal activity upon release, satisfy his burden that conditions of release exist to reasonably assure his appearance and the safety of any other person and the community. Should this court disagree, compelling reasons exist to temporarily release Mr.

Miranda under 18 U.S.C. §3142(i).

Mr. Miranda suffers from diabetes as well as other pre-existing health conditions.

On November 18th, 2020 he was remanded into U.S. Marshall's custody at Santa Rita jail. As of the date of this filing, Santa Rita reported a population of 1866 inmates. The Alameda County Sheriff claims that currently there are SRJ has 50 positive inmate COVID-19 cases and 15 current positive staff/contractor cases positive inmate COVID-19 cases. Those numbers have

increased dramtically in the past three weeks.

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positive.(https://alamedacountysheriff.org/admin\_covid19.php).

In this unprecedented time, all justice system partners are duty-bound to take action to protect vulnerable populations and the community at large. COVID-19 is primarily spread from person to person from respiratory droplets when an infected person coughs, sneezes, or talks or

by touching a surface or object that has the virus on it, and then by touching your mouth, nose, or eyes. Given the conditions of Santa Rita Jail, it is nearly impossible to avoid the risk of infection.

Here, any potential risk of flight danger to the community posed by Mr. Miranda's release can be addressed by the sureties available here, as well as any conditions set forth by this court, including monitoring. However, nothing can address the dangers posed by the closed quarters of the Santa Rita County Jail during COVID and the imminent threat to the inmates and the jail staff. Balancing the potential harm of his continued pretrial incarceration against the potential harm of his failing to appear at a future court hearing, it is clear that release with appropriate conditions is necessary.

Inmates have long suffered inadequate medical care in Santa Rita. Two civil rights class action lawsuits are currently pending in the Northern District of California alleging a lack of adequate medical care, and a third class action lawsuit alleges a lack of mental health treatment. See Mohrbacher et al v. Alameda County Sheriff's Office et al, 18-cv-00050 JD, (N.D CAL.) (female inmate class action.); Gonzalez et al v. Ahern et al, 19-cv-07423 JSC, (N.D Cal.) (male inmate class action); Babu et al v. Ahern et al, 18-cv-07677 NC (N.D. Cal). The complaints in these cases paint a shocking picture of neglect and mistreatment, including inmates receiving no medical attention while undergoing drug detox (Gonzalez, Dkt. No. 1 at ¶94), inmates being denied lifesaving prescribed medication for weeks (Id. at ¶ 93), slow response times to medical emergencies like seizures (Id. at ¶ 96), and unanswered requests for medical attention by bedridden inmates (Mohrbacher, Dkt. No. 103 at ¶ 94). And these examples are not isolated incidents; rather, they reflect a systemic problem at Santa Rita that will hinder the ability of

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inmates with COVID-19 to receive adequate care. As of October 2019, Santa Rita had a 50% higher death rate than the LA County jail system, the largest county jail system in the nation and one six times larger than Santa Rita.

Given the inadequate medical care inmates experienced *before* COVID-19 pandemic, this court cannot be confident Mr. Miranda will receive medical attention for his pre-existing medical conditions, let alone if he is infected with COVID-19.

By contrast, if released to home confinement, Mr. Miranda could continue to see his doctor to address his conditions and seek immediate emergency medical attention if he experienced any onset or exacerbation of health problems due to COVID-19.

Given that Santa Rita has failed to provide adequate care or sanitary conditions to inmates in the best of times, it is doubtful that Santa Rita will be able to limit the spread of COVID-19 in the jail.

Other courts have released inmates where medical conditions exposed them to particular risk of serious COVID-19-induced illnesses. See Matter of Extradition of Toledo Manrique, No. 19-MJ-71055 TSH, 2020 WL 1307109, at \*1 (N.D. Cal Mar. 19, 2020) ("The risk that this vulnerable person will contract COVID-19 while in jail is a special circumstance that warrants bail."); United States v. Parmer, No. 18-CR-00267-RS-1, 2020 WL 2213467 (N.D. Cal. Apr. 14, 2020) (Granting temporary pretrial release to 55 year old defendant with acuate need to prepare for imminent trial); United States v. Daniels, No. 19-CR-00709-LHK (NC), 2020 WL 1815342 (N.D. Cal. Apr. 9, 2020) (granting temporary pretrial release to defendant with obesity, previous head wounds, and post-traumatic stress diserder); United States v. Garcha. No. 19CR00663EJD1VKD, 2020 WL 1593942 (N.D. Cal. Apr. 1, 2020) (granting temporary pretrial release to defendant who is HIV-positive, has a brain tumor, and suffered a pulmonary

We ask that, if the court does not find clear and convincing evidence to warrant Mr. Miranda's pretrial release in this case, it must exercise its discretion under 18 U.S.C. §3142(i)

and grant temporary release for the compelling reasons stated above. CONCLUSION For all the foregoing reasons, Mr. Miranda should not be detained, as there are a combination of conditions which can ensure his attendance in court and will protect the interests of the community. In the alternative, the court should grant temporary release given Mr. Miranda's medical conditions and the COVID pandemic. Dated: December 30, 2020 Respectfully Submitted, /S/JESSE J. GARCIA JESSE J. GARCIA Attorney for Defendant FRANCISCO MIRANDA 

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8	FRANCISCO MIRANDA
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10	IN THE UNITED STATES DISTRICT COURT
11	NORTHERN DISTRICT OF CALIFORNIA
12	LINITED STATES OF AMEDICA ) CASE NO . 2.2020 CD 00452
13	UNITED STATES OF AMERICA, ) CASE NO.: 3:2020-CR-00452
14	Plaintiff,  DECLARATION OF AUSTIN M. THOMPSON IN SUPPORT OF DEFENDANT'S OPPOSITION TO UNITED STATES' MOTION TO DEVOKE
15	vs. ) TO UNITED STATES' MOTION TO REVOKE ) RELEASE ORDER
16	FRANCISCO MIRANDA, )
17	Defendant. )/ )
18	I, Austin M. Thompson declare as follows:
19	1) Attached as Exhibit "1" please find a copy of prescriptions given to defendant,
20	Francisco Miranda from his doctor in Mexico with regards to his diabetes and
21	high blood pressure & Metformina" (Metformin), "Glibenclamida"
22	(Glibenclamide), and "Lozartan" (Losartan).
23	2) Attached as Exhibit "2" please find a copy of four (4) Certificate of Titles's
24	offered by Francisco's family as potential sureties.
25	I declare under penalty of perjury that the foregoing is true and correct to the best of my
26	knowledge and belief.
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28	U.S.A. v. FRANCISCO MIRANDA, CASE NO.: 3:2020-CR-00452 DEFENDANT'S OPPOSITION TO U.S.A MOTION TO REVOKE RELEASE ORDER

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U.S.A. v. FRANCISCO MIRANDA, CASE NO.: 3:2020-CR-00452 DEFENDANT'S OPPOSITION TO U.S.A.. MOTION TO REVOKE RELEASE ORDER

# Dr. Luis Alvaro Barbosa Santos

MEDICINA GENERAL

Av. Quinceo Núm. 641-B • Col. Mariano Escobedo • C.P. 58116 • Morelia, Mich.

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Dr. Luis Alvaro Barbosa Santos

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Av. Quinceo Núm. 641-B • Col. Mariano Escobedo • C.P. 58116 • Morelia, Mich.

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Dr. Luis Alvaro Barbosa Santos

### **MEDICINA GENERAL**

Av. Quinceo Núm. 641-B · Col. Mariano Escobedo · C.P. 58116 · Morelia, Mich.

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KEEP IN A SAFE PLACE - VOID IF ALTERED



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